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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,687	12/14/2001	Joseph Robert Cleveland	SAMS01-00169	2991

7590 09/13/2007

Docket Clerk
P.O. Drawer 800889
Dallas, TX 75380

EXAMINER	
AHMED, SALMAN	

ART UNIT	PAPER NUMBER
2616	

MAIL DATE	DELIVERY MODE
09/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/024,687</p>	<p>Applicant(s) CLEVELAND ET AL.</p>	
	<p>Examiner Salman Ahmed</p>	<p>Art Unit 2616</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 43-45 and 55-57.
Claim(s) rejected: 37-42, 46-54 and 58-68.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 3. NOTE: Applicant's arguments see pages 19-23 of the Remarks section, filed 8/28/2007, with respect to the rejection of claims have been fully considered. Applicant has amended claims 37, 42, 43, 49, 54, 55, and 61

Applicant argues (page 21 paragraph 3) that claims 42 and 54 have been amended to add significant limitations from claims 43 and 55, respectively, indicated by the Examiner as allowable. However, Examiner respectfully points out that, not all the limitations of claims 43 have been added to claim 42, and similarly, not all the limitations of claims 55 have been added to claim 54. In the Final Office action dated 6/28/2007, claims 43- 45 and 55-57 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations (emphasis added) of the base claim and any intervening claims. As such, Applicant's amendment changed the scope of the claims 42 and 54 raising new issues, which would require further consideration and/or search.

Applicant argues (page 21 last paragraph) that independent claims 37 and 49 are amended to indicate that the claimed base station receives an A3 physical transition directive message from another base station to increase a bandwidth of a second channel to the mobile station. As such, Applicant's amendment changed the scope of the claims 37 and 49, which would require further consideration and/or search.

Applicant argues (page 22 first paragraph) that claim 61 is amended to clarify communications between the mobile station and two respective base stations. As such, Applicant's amendment changed the scope of claim 61, which would require further consideration and/or search.

In regards to claim 61, Applicant further argues (page 22 second paragraph) that claim 61 requires "the apparatus is further capable of receiving at least one replacement data packet from said first base-station and said second base station on said second channel at a second data rate, which is higher than said first data rate" (emphasis added). No art of record teaches or suggests that the replacement data packet can or should be received from both a first base station and a second base station. However, Examiner respectfully points out that Applicant's amendment changed the scope of claim 61, which would require further consideration and/or search. Regardless, in regards to claim 65, Kubota teaches in section 0005 and 0009, the soft hand-off control process can switch radio channels without an instantaneous transmission break because the present radio channel remains connected when the call is connected to a radio channel to switch to. When first base station 11.sub.1 receives quality information 22, first base station 11.sub.1 performs a soft hand-off control process, and transmits soft hand-off request 23 to second base station 11.sub.2. Second base station 11.sub.2 assigns an inherent spreading code and sets a radio channel between itself and mobile station 17. Mobile station 17 now enters a soft hand-off mode dominated by first base station 11.sub.1 in which a radio channel is connected between mobile station 17 and first and second base stations 11.sub.1, 11.sub.2. Mobile station 17 then communicates with mobile switching center 13 via first and second base stations 11.sub.1, 11.sub.2 (communication 24), i.e. data packet can be received from both a first base station and a second base station including replacement packets. Although, Coverdale, Das and Kubota teach all the limitations of claim 65, the phrase, "capable of" does not require all of the details that follow it, in other words, the base stations of Coverdale, Das and Kubota do not require to explicitly show/do all the steps of limitations of the claims, as long as they are capable of doing the steps. The base stations in Coverdale, Das and Kubota's teaching have all the necessary components of a base station as it is known by one of ordinary skill in the art. That is, the base stations in Coverdale, Das and Kubota have encoders, transmitters, receivers, antenna, processors, memory etc. As such Coverdale, Das and Kubota's base stations are "capable of" doing all the steps of the any limitations of present claim if it is programmed and configured to do so. Applicants current claim is "capable of" stated limitations. It is not clear, whether, that capability is actually being implemented to perform the stated steps or merely saying that if programmed it will be "capable of" doing so.

Applicant argues (page 22 second paragraph) that claim 65 is allowable, however, Applicant does not give any reasons for the assertion.

EDAN B. ORGAD
SUPERVISORY PATENT EXAMINER

Edan Orgad 9/7/07